

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION**

#### **JOINT APPROPRIATIONS SUBCOMMITTEE ON HEALTH AND HUMAN SERVICES**

**Call to Order:** By **CHAIRMAN CHRISTINE KAUFMANN**, on January 12, 2005 at 8:00 A.M., in Room 472 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Christine KAUFMANN, Chair (D)  
Sen. Dan Weinberg, Vice Chairman (D)  
Sen. John Cobb (R)  
Rep. Joey Jayne (D)  
Sen. Greg Lind (D)  
Rep. Penny Morgan (R)

**Members Excused:** REP. Walter McNutt (R)

**Members Absent:** None.

**Staff Present:** Pat Gervais, Legislative Branch  
Laura Good, Committee Secretary  
Lois Steinbeck, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**CHAIR REP. CHRISTINE KAUFMANN (D), HD 81, HELENA,** called the meeting to order.

**Mr. Joe Matthews, Administrator, Disabilities Services Division (DSD) of the Department of Public Health and Human Services (DPHHS),** addressed the committee on the Disability Services Division of DPHHS. He provided committee members with a large binder of information about DSD.

**EXHIBIT(jhh08a01)**

First, **Mr. Matthews** reviewed the DSD vision statement on the opening Page and division organization, as available on the introductory Pages of the binder.

**Mr. Matthews** then introduced DSD staff members who were joining him for today's presentation.

- **Mr. Jeff Sturm, Director of Developmental Disability Programs** within DSD. Mr. Sturm is also the outgoing superintendent of the Montana Developmental Center (MDC) in Boulder.

- **Mr. Matt Bugni, Financial Services Bureau Chief.**

- **Ms. Michelle Thibodeau, Chief, Disability Determination Program.**

- **Ms. Connie Phelps, Director of Montana Telecom Access Program (MTAP) .**

- **Ms. Peggy Williams, Bureau Chief, Vocational Rehabilitation.**

- **Mr. Tim Plaska, Community Services Bureau Chief for Developmental Disabilities.**

- **Ms. Jannis Conselyea, Program Support Bureau Chief for Developmental Disabilities.**

***{Tape: 1; Side: A; Approx. Time Counter: 10.2}***

**Mr. Matthews** directed the committee to the Division Overview Section of the binder, touching on DSD's Mission and its five Division Programs: Developmental Disabilities Program, Vocational Rehabilitation Program, MDC and MTAP. He overviewed Fiscal Year (FY) 2004 expenditures and noted that Developmental Disabilities Community Programs require the greatest expenditures. He also explained that DSD utilizes Medicaid waivers, which require divisions to operate eligibility-based programs with waiting

lists, as opposed to entitlement programs. **Mr. Matthews** went on to discuss FY 2004 Full-Time Equivalent (FTE) by program.

**SEN. DAN WEINBERG (D), SD 2, WHITEFISH**, asked Mr. Matthews to comment on the number of staff who are state employees and the number of staff who are contract employees.

**Mr. Matthews** agreed to provide the committee with this information.

*{Tape: 1; Side: B}*

Responding to a question from **REP. PENNY MORGAN (R), HD 57, BILLINGS**, regarding the total number of DSD staff, **Mr. Matthews** replied that the Division uses MBARS, a state accounting equation, to incorporate full-, half- and quarter-time positions into the total number of staff.

**Mr. Bugni** also noted that the FTE includes allocation details wherein a full-time administrative staff member might be accounted for using a value of 0.3.

**Ms. Pat Gervais** directed the committee to the DSD Budget Analysis found in their committee binders. She noted issues such as stop-loss calculations (Page B-129); timing of implementation of DSD system changes (Page B-130); Montana's Travis D. litigation settlement agreements (lower Page B-130); further correspondence regarding the Travis D. case (Page B-131); policy issues discussed by the Mercer project advisory committee (Page B-132-133); and waiver enrollment, service provision and funding issues (Page B-133).

*{Tape: 1; Side: B; Approx. Time Counter: 17}*

**SEN. GREG LIND (D), SD 50, MISSOULA**, asked if the waiver enrollment issue is related to Medicaid acute care funding.

**Ms. Gervais** stated that it is not.

**SEN. LIND** followed up for clarification.

**Ms. Gervais** remarked that per the waiver, the state is required to provide all services within an identified plan of care.

**SEN. DAN WEINBERG (D), SD 2, WHITEFISH**, requested clarification of the Olmstead decision, which he understood as ensuring that individuals receive treatment in the least restrictive setting. He wondered how this might affect integrative services.

**Ms. Gervais** confirmed that the Olmstead decision not only called for service in the least restrictive setting, but also addressed the need for service situations that complied with community integration policies. Non-integrative services have been found to be in violation of the Americans with Disabilities Act.

Appealing for more information regarding the Travis D. lawsuit, **Ms. Gervais** directed REP. MORGAN and the committee to Page B-130 in the Budget Analysis. She stated that the Travis D. lawsuit centered around the provision of community-based services, rather than institutional services, to some consumers at MDC.

*{Tape: 1; Side: B; Approx. Time Counter: 22}*

**SEN. JOHN COBB (R), SD 9, AUGUSTA**, solicited Ms. Gervais' recommendation on ways that the committee can incorporate Travis D. lawsuit policy issues into funding decisions. He also proposed that committee members consider meeting bi-weekly to discuss other policy details affecting funding.

**Ms. Gervais** suggested that the committee continue with Department presentations, after which the group might discuss which policy issues they would like to follow. She said that they might also consider proposing an interim study of some of the policy changes necessitated by Travis D.

**SEN. COBB** recommended that divisions and departments work out some of the policy and funding details issues, then create proposals for committee presentation.

**CHAIR KAUFMANN** agreed with SEN. COBB's remark.

**REP. MORGAN** asked Mr. Matthews how he thought it best to approach all issues regarding the department and divisions' budgetary and statutory issues.

*{Tape: 1; Side: A; Approx. Time Counter: 26.3}*

**Mr. Matthews** asserted that the DSD would continue with its division presentations, covering such issues as they arise.

**REP. JOEY JAYNE (D), HD 15, ARLEE**, proposed that the committee begin with department and division proposals, and then return as needed to specific service and program overviews.

**CHAIR KAUFMANN** said she would request that divisions move more quickly to discussion of issues.

**SEN. WEINBERG** followed up, commenting on the importance of overviews.

**{Tape: 2; Side: A}**

**SEN. WEINBERG** asked the departments to consider themselves as cooperative committee members, who might provide definitive information on how programs can best be improved.

**Ms. Gervais** then directed the committee to Page B-134 in the Budget Analysis, which includes detailed information from DSD on ways the committee might enact change in billing processes for children aging out of Developmental Disability (DD) services and authorize program changes as necessitated by population changes at MDC.

**Mr. Jeff Sturm** directed the committee to pertinent DD definitions on Page 33 of Exhibit One. He also led the committee through a brief history of DSD waivers (Page 34).

**REP. MORGAN** solicited clarification of populations served at Warm Springs and MDC.

**Mr. Sturm** stated that Warm Springs cares for mentally ill consumers and MDC cares for developmentally disabled consumers. He noted that the average stay at MDC can range from two to three years for consumers in transit to home and community based programs, to 40-50 years for consumers who require high levels of care.

**Mr. Sturm** went on to detail the Home and Community Based Waiver (Page 34). Directing the committee to Pages four and five, he noted the Developmental Disabilities Program (DDP) services provided under the waiver, which include Work and Other Day Services, Community Living and Residential Services, Home-Based Family Education and Support Services, and Other Support Services including case management, transportation, adaptive equipment, and evaluation and diagnosis services.

**{Tape: 1; Side: A; Approx. Time Counter: 18.6}**

**SEN. LIND** queried Mr. Sturm on whether or not the transportation, adaptive equipment, and evaluation and diagnosis services were needs-based.

**Mr. Sturm** confirmed that they were.

**Mr. Sturm** continued to Pages five through seven of Exhibit One, discussing the growth of the number of DD consumers, the number

of individuals on the waiting lists, and the number of individuals on waiting lists who are receiving some services.

**REP. MORGAN** noted that, according to the chart on Page seven, 832 individuals on the DDP waiting list are receiving some DDP services.

***{Tape: 1; Side: A; Approx. Time Counter: 21.2}***

**Mr. Sturm** confirmed this, and stated that some are covered under waiver and others are covered under general fund. Responding to **SEN. WEINBERG**, he explained that individuals on the waiting list have already received intake and are determined eligible for DDS services.

**SEN. WEINBERG** asked if there was any research on the behavior of individuals on waiting list, specifically indicating whether health conditions improved or worsened while on the waiting list.

**Mr. Sturm** contended that he was not aware of any such research, but would investigate it on behalf of the committee. He also reported that individuals on the waiting list have the service of case managers, who help them deal with crises.

***{Tape: 2; Side: A; Approx. Time Counter: 23}***

**Mr. Sturm** stated that during its 2000 Montana overview, the Center for Medicaid and Medicare Services (CMS) found Montana not in compliance with federal 1915(c) waiver regulations requiring freedom of choice. Since that time, Montana has been working hard to correct this issue, as purported by the report of programs listed on Pages seven, eight and nine. Continuing on Page nine, **Mr. Sturm** offered an overview of the Travis D. Lawsuit. He conveyed that in order to comply with the terms of the settlement, the state was in currently closing or in the process of closing 16A, B and C Long Term Care units at MDC.

**REP. MORGAN** inquired as to where 16A, B, and C consumers will go following closure of their units.

**Mr. Sturm** claimed that these consumers would proceed to intensive group homes, where the division has been able to duplicate many institutional services in the community.

***{Tape: 1; Side: A; Approx. Time Counter: 26.4}***

**REP. MORGAN** called for information regarding cost savings of community plans.

**Mr. Sturm** maintained that cost savings of community plans is difficult to quantify, and that most studies find community and institutional costs to be nearly equal. He indicated that regardless of current cost issues, the Olmstead decision requires the state to provide community-based services.

**Mr. Sturm** closed his discussion of Travis D. and moved on to detail the Montana Association for Independent Disability Services, Inc. (MAIDS) lawsuit, which addressed wage parity between direct care staff employees of state-run institutions and employees of comparable community-based programs.

*{Tape: 2; Side: B}*

**Mr. Sturm** concluded his discussion on the MAIDS lawsuit.

Next, **Mr. Sturm** briefed the committee on SB 35, which allowed convicted criminals to receive care at MDC. Currently, two criminals receive MDC services and three have undergone the MDC intake process.

**Ms. Gervais** interjected, offering that MDC had a criminal commitment prior to SB 35, which served to clarify the issue.

**Mr. Sturm** explained that federal regulators had found MDC not in compliance because it mixed general population consumers and criminals and/or dangerous individuals. The division responded by creating a locked unit where this specific group could receive care. **SEN. WEINBERG** requested a description of the lock-down facility, which **Mr. Sturm** described as residential in feel, with an atmosphere similar to that of a hospital unit.

**REP. MORGAN** sought information regarding risk evaluation of criminals slated for MDC care.

*{Tape: 3; Side: A; Approx. Time Counter: 9.5}*

**Mr. Sturm** advised that SB 35 allowed the Department Director to request alternate services for extremely dangerous individuals.

**Mr. Sturm** directed the committee to photos of the MDC facilities, then commented on the division's work with federal regulators on protocols by which individuals are deemed eligible for DD institutional services. He noted that federal regulators have rescinded their verdict regarding 19 Montana consumers whom they deemed to be DD ineligible, citing pressures from a number of states regarding the re-working of eligibility protocols. Responding to a question from **SEN. COBB**, **Mr. Sturm** contended that

these 19 individuals have been and continue to be covered by Medicaid.

**Ms. Gervais** elaborated on funding issues, reminding the committee that MDC is funded entirely through the general fund. The department then bills, and Medicaid revenue pays, the bond issue, after which any surplus is deposited to the general fund. Thus, loss of certification on individuals like the 19 consumers cited above is a loss in general fund revenue, not an increase in appropriation for the facility.

*{Tape: 2; Side: B; Approx. Time Counter: 18.1}*

**Mr. Sturm** agreed and then noted that Immediate Care Facilities for Developmentally Disabled consumers (ICF/DD) are not Medicaid eligible.

**REP. MORGAN** requested further information on the bed tax, which **Mr. Sturm** confirmed at 5%.

**Ms. Gervais** interjected, stating that 30% of the MDC and Nursing Care Center bed utilization fee goes back to the general fund, so that monies appropriated for payment of the fee are paid by the federal reimbursement. The balance of 70% goes into The Prevention and Stabilization account, a state special revenue fund. She noted that the bed utilization fee is ongoing, and that there is current bill requesting an increase from 5% to 6%. Governor Schweitzer's Budget proposes appropriating the money in The Prevention and Stabilization account for the support of child care expenditures.

**REP. MORGAN** called for information on the federal attitude toward the bed tax.

**Mr. John Chappuis, Deputy Director of DPHHS**, stated that federal regulators continue to strive for consistent enforcement of bed tax regulations.

*{Tape: 2; Side: B; Approx. Time Counter: 22.5}*

Responding to **REP. MORGAN**, **Mr. Sturm** offered limited comments on how the DSD system changes will affect MDC.

**REP. MORGAN** followed up with a question on whether or not the closure of units 16A, B, and C would result in a lower MDC budget for the upcoming biennium.

**Mr. Sturm** judged that it would not.



**Ms. Gervais** stated that this closure would not cause a significant decrease in overall division or department funds, because many monies would shift with individuals as they move from institution services to similarly priced home and community based care services.

**REP. JAYNE** petitioned for a clear iteration of all DD issues, and division input as to whether or not all of them can be discussed today.

**Ms. Gervais** suggested that the Budget Analysis document would provide the majority of the requested information.

*{Tape: 3; Side: A}*

Responding to a question from **REP. MORGAN** regarding DPHHS' process for implementing rate structure, **Ms. Gervais** deferred to **Mr. Sturm**, who outlined the importance of DPHHS' stop-loss component in ensuring that service providers stay in business.

Following a short break, **CHAIR KAUFMANN** reminded the committee that members can rely on staff to provide fine detail information during the Executive Action phase.

**Ms. Gervais** encouraged the committee either to have Mr. Matthews review in summary DD decision packages, or to request further discussion from Mr. Sturm on the screening process.

**REP. JAYNE** requested a summary of the DD decision packages.

**Ms. Gervais** suggested that the committee discuss decision packages in the context of programmatic issues. She further requested that Mr. Matthews review Page B-137 and Page B-140 in the Budget Analysis and focus his remarks only on DD agency programs.

**Mr. Matthews** turned to Page B-137 in the Budget Analysis, discussing Decision Package 25 Federal Medical Assistance Percentage (FMAP) Enhancement Adjustment, DP 31 FMAP Adjustment - Developmental Disabilities, DP 40 Closure of Eastmont, DP 47 Montana Developmental Center Base Adjustments (accounting for staff overtime and differential pay in a 24-hour comprehensive care facility).

*{Tape: 3; Side: A; Approx. Time Counter: 15.1}*

**SEN. COBB** asked if DP 47 calculations included the 4% vacancy savings.

**Mr. Matthews** conveyed that after the 4% vacancy savings pulled out, the division received funding relief from the Governor's office and other state agencies.

At **SEN. COBB's** request, **Mr. Chappuis** agreed to provide detailed information regarding budget implications of the vacancy savings.

*{Tape: 3; Side: A; Approx. Time Counter: 16.5}*

**Mr. Matthews** went on to discuss DP 52 - Rent Increases, DP 59 - Vocational Rehabilitation Tuition Increases, and DP 64 - Montana Developmental Center Replacement Equipment.

**REP. MORGAN** inquired as to the ownership status of the service truck and two passenger vans which the division sought to replace.

**Mr. Matthews** said that all vehicles are owned, not leased.

**Mr. Matthews** continued with his discussion of DP 92 - Montana Telecommunications Access Program Increase, DP 109 - Montana Telecommunications Access Program Decrease, DP 135 - Disability Determination Services Base Adjustment, and DP 9999 - Statewide FTE Reduction.

Regarding the FTE Reduction, **Ms. Gervais** expressed that last session's legislature authorized across-the-board reduction in personnel services, and encouraged the committee to ask each program how it has dealt with this.

Responding to **CHAIR KAUFMANN's** request for division comment on FTE, **Mr. Matthews** voiced that in matters of staff reduction and vacancy savings, the division's first priority is also to maintain programs that provide direct care. He noted that entry level pay at MDC is approximately \$8.30/hour.

*{Tape: 3; Side: A; Approx. Time Counter: 25.8}*

**SEN. LIND** asked the division if staffing is limited because of infrastructure or because of DD consumer caps.

**Mr. Matthews** said that limits are caused by both factors.

**REP. MORGAN** inquired as to the efficacy of removing the vacancy savings for DD, and also sought clarification as to why DD had not used its contingency fund to cover costs.

**Ms. Gervais** purported that DD's contingency fund stands at \$1-2 million, but that the Governor's Budget Office must approve all requests for use of contingency fund monies.

**REP. MORGAN** proposed that the committee consider excluding the Governor's Budget Office from DD's contingency fund use decisions.

**Bob Andersen, Office of Budget and Program Planning**, held that contingency fund use is dependent upon available contingency funds.

*{Tape: 3; Side: B}*

**Mr. Andersen** also stated that the vacancy savings makes it difficult to respond to both continuous and unanticipated vacancies. He concluded by citing that the contingency fund is designed primarily for use by small agencies.

**Mr. Matthews** echoed Mr. Andersen's statements regarding vacancy savings, stating that some positions within the division are extremely necessary but very hard to fill, and often remain open for extended periods of time.

**Mr. Matthews** turned to Page 141 to discuss DSD's New Proposals. He noted that DP 39 satisfied Travis D. settlement requirements, and that DP 83 would bring 15 of 400 wait-listed individuals into service. Per questioning, he stated that wait-listed individuals most in crisis are served first.

**Ms. Gervais** conveyed that DP 39 and DP 83 tie back to other questions inherent in the Budget Analysis: first, are wait-list-to-services screening processes adequate; and second, if individuals on waivers are currently not receiving all waiver services, should increased funding allow them to receive full funding and full services, or should the divisions allocate new monies to the admission of more individuals to the waiver.

She also alleged that most young DD consumers are not interested in moving into adult DD group homes, and expressed that this reality forces the committee to consider developing other programs.

*{Tape: 3; Side: B; Approx. Time Counter: 16.7}*

**REP. MORGAN** solicited alternatives to group home situations.

**Mr. Matthews** charged that de-institutionalized individuals are currently moving into group homes, and many of those in group

homes are currently moving into supporting living apartments or duplexes where they receive full or intermittent care, and rent is covered by consumers' Social Security Supplemental Income (SSSI). He suggested that such supported living environments might be a good alternative to group home care.

**CHAIR KAUFMANN** asked if care costs might cause fewer than 15 individuals to move from wait lists to service.

*{Tape: 3; Side: B; Approx. Time Counter: 19.8}*

**Mr. Matthews** stated that this was true, and in response to a follow-up question indicated that individual plans of care are not developed until individuals come off waiting lists. While on the wait-list, case managers create only profiles of need. He related that case management is entitled for Medicaid recipients.

**Ms. Gervais** suggested that Mr. Sturm discuss the screening process and how wait-listed individuals are chosen for services.

**Mr. Sturm** recounted that the state first serves individuals with the highest need; i.e., those who are at risk of harming themselves or others, or of becoming homeless.

**REP. MORGAN** asked if individuals and families who do not fall in the highest need category may receive some small amount of funds to help cover costs.

**Mr. Sturm** maintained that it is very difficult and complicated for such families to receive funding.

**Mr. Matthews** directed the committee back to Budget Analysis Page B-141, where he overviewed DP 149 - Developmental Disabilities Program - Fed Authority and DP 168 - Bed Tax Funding.

*{Tape: 4; Side: A}*

Prompted by Ms. Gervais, **Mr. Chappuis** described the Bed Tax as a mechanism approved by CMS.

**Mr. Andersen** stated that the Budget Analysis provided by committee staff is based on the Governor Martz Budget. Thus, at the time of Executive Action the committee will need to refer to Decision Packages in the Schweitzer Budget.

**Ms. Gervais** promised to provide the committee with Budget Analyses and Decision Packages that reflect Governor Schweitzer's budget.

**SEN. COBB** took a moment to describe past committee voting maneuvers, saying that it was to the advantage of the minority and/or any individuals with specific priorities to request early voting on their pet actions, while it was to the advantage of the majority to save all voting until the end of committee.

Per **SEN. COBB's** request earlier in the session, **Mr. Chappuis** provided committee members with a handout detailing how much state matching funds would be required to increase the direct care salary paid to community providers.

**EXHIBIT(jhh08a02)**

***{Tape: 4; Side: A; Approx. Time Counter: 11}***

**CHAIR KAUFMANN** asked how much money would be needed to wipe out the DD waiting list.

**Ms. Gervais** said that there were options beyond increased funding, including alteration of eligibility criteria. Responding to **SEN. WEINBERG**, **Ms. Gervais** reported that DPHHS has also begun to encourage non-Medicaid eligible DD consumers with personal trust funds to use these personal funds to cover care needs.

**SEN. LIND** inquired as to the use of means-testing for DD consumers.

**Mr. Matthews** said that there is no means-testing in place for DD consumers, but that other programs like Vocational Rehabilitation utilize means-testing. He agreed to provide the committee with information on the outcome of other states' means-testing usage.

This initiated a larger discussion on means-testing, family and individual cost-participation, which included **Mr. Chappuis'** assertion that the current SB-150 Waiver of Deeming Bill authorizes but does not mandate means-testing. Also, **Mr. Matthews** agreed to provide the committee with the Department's non-scientific data on the number of families who might be able to take part in cost-participation. **Ms. Gervais** interjected that the Department is also seeking a waiver of deeming for Seriously Emotionally Disturbed (SED) children.

***{Tape: 3; Side: B; Approx. Time Counter: 25.6}***

**REP. JAYNE** commented that Child Support Enforcement Division services can be utilized without means-testing.

**Ms. Gervais** stated that federal regulation requires this.

**REP. MORGAN** requested clarification of DP 3 and DP 10. She asked if the stabilization fund used in last session was still in existence, and if those funds still existed.

***{Tape: 3; Side: B; Approx. Time Counter: 28.9}***

**Ms. Gervais** said that the fund continues to exist, but now the only monies going into this fund will be those related to the Bed Tax.

**REP. MORGAN** inquired as to the intention of the fund per last session.

**Ms. Gervais** reported that the fund was utilized last session to maintain a number of programs that were proposed for elimination or reduction within the Executive Budget. With respect to the two aforementioned DP's, Governor Martz had proposed continuing to fund them with an ongoing diversion of tobacco settlement proceeds. Governor Schweitzer now proposes funding these two items with the General Fund.

***{Tape: 4; Side: B}***

**Mr. Matthews** closed the meeting with a brief discussion of the future of DD. He foresees the creation of programs by which MDC staff travel to communities to provide specific and detailed service needs, which the MDC facility in Boulder expands to serve behavioral, criminal or sexual deviant individuals.

**ADJOURNMENT**

Adjournment: 11:50 A.M.

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REP. CHRISTINE KAUFMANN, CHAIRman

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LAURA GOOD, Secretary

CK/LG

Additional Exhibits:

**EXHIBIT ([jhh08aad0.PDF](#))**